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# Instructions for Form 5300

(Rev. February 2013)



Department of the Treasury  
Internal Revenue Service

## Application for Determination for Employee Benefit Plan

Section references are to the Internal Revenue Code unless otherwise noted.

### What's New for 2012

The form and the instructions have undergone revisions in the format and the information required. Some of the revisions were made under Announcement 2011-82, 2011-52 I.R.B. 1052, which eliminated demonstrations regarding coverage and nondiscrimination requirements and limited Form 5307, Application for Determination for Adopters of Modified Volume Submitter (VS) Plans applications.

**Note.** Rev. Proc. 2012-6, 2012-1 I.R.B. 197, available at [www.irs.gov/irb/2012-01\\_IRB/ar11.html](http://www.irs.gov/irb/2012-01_IRB/ar11.html) contains the guidance under which the determination letter (DL) program is administered. The Rev. Proc. is updated annually and can be found in the Internal Revenue Bulletin (I.R.B.). The application should be filed under Rev. Proc. 2007-44, 2007-28 I.R.B. 54 available at [www.irs.gov/irb/2007-28\\_IRB/ar12.html](http://www.irs.gov/irb/2007-28_IRB/ar12.html) (as revised by Ann. 2011-82), and Rev. Proc. 2012-6.

Review these documents before completing the application.

**Disclosure Request by Taxpayer.** A taxpayer can authorize the IRS to disclose and discuss the taxpayer's return and/or return information with any person(s) the taxpayer designates in a written request. Use Form 2848, Power of Attorney and Declaration of Representative, if the representative is qualified to sign, or Form 8821, Tax Information Authorization, for this purpose. See Pub. 947, Practice Before the IRS and Power of Attorney, for more information.

**Public Inspection.** Form 5300 is open to public inspection if there are more than 25 plan participants. The total number of participants must be shown on line 4e. See the instructions for line 4e for a definition of participant.

## General Instructions

### Purpose of Form

File Form 5300 to request a DL from the IRS for the initial qualification of a

defined benefit (DB) or a defined contribution (DC) plan and the exempt status of any related trust.

### Who May File

This form may be filed by any:

- **Employer**, including a sole proprietor, partnership, plan sponsor, or a plan administrator that has adopted an individually designed plan to request a DL on:

1. Initial qualification of a plan;
2. Qualification of an entire plan as amended;

- **Employer, plan sponsor, or plan administrator**, requesting a DL for compliance with the applicable requirements of a foreign situs trust for the taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 401(a)(4)).

File Form 5307 instead of Form 5300, if this is a VS plan that has made limited modifications to an approved specimen plan (that does not create an individually designed plan).

**Note.** Adopters of Master and Prototype (M&P) plans may not use Form 5307.

In certain circumstances as noted in instructions to lines 3a(2) and 3g later, an application for a DL for a VS or M&P plan must be filed on Form 5300 and the plan will be reviewed on the basis of the Cumulative List (CL) that was considered in issuing the opinion or advisory letter for the plan. For all other pre-approved plan submissions on Form 5300, follow the applicable procedures for individually designed plan submissions, except as specifically noted in these instructions.

**Note.** If no changes have been made by an adopting employer other than to select among options in the adoption agreement or make other permitted changes as specified in section 19.03 of Rev. Proc. 2011-49, 2011-44 I.R.B. 608 available at [www.irs.gov/irb/2011-44\\_IRB/ar08.html](http://www.irs.gov/irb/2011-44_IRB/ar08.html) (and if the special requests described under line 3a later do not apply) an adopting employer can rely on a favorable opinion or advisory letter for the plan

and a determination letter is not required for reliance.

### Type of Plan

A **DC plan** is a plan that provides an individual account for each participant and for benefits based only on:

1. The amount contributed to the participant's account, and
2. Any income, expenses, gains and losses, and any forfeiture of accounts of other participants that may be allocated to the participant's account.

A **DB plan** is any plan that is not a DC plan.

**Termination of Plan.** If the plan is terminated, file Form 5310, Application for Determination For Terminating Plans.

If benefit accruals or contributions have ceased, the plan and trust will not be considered terminated until an official action to terminate has occurred ("frozen plan").

**Note.** A DB plan cannot be amended to become a DC plan. If a sponsor of a DB plan attempts to amend the plan to become a DC plan, or if the merger of a DB plan with a DC plan results solely in a DC plan, the DB plan is considered terminated.

### Where To File

File Form 5300 at the address indicated below:

Internal Revenue Service  
P.O. Box 12192  
Covington, KY 41012-0192

Requests shipped by express mail or a delivery service should be sent to:

Internal Revenue Service  
201 West Rivercenter Blvd.  
Attn: Extracting Stop 312  
Covington, KY 41011

**Private delivery services.** In addition to the United States mail, you can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The

list of designated private delivery services includes only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

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## How To Complete the Application

The application must be complete and signed by the employer, plan administrator, or authorized representative.

**Note.** Stamped signatures are not acceptable.

Incomplete applications may be returned to the applicant. It is important that an appropriate response be entered for each line item (unless instructed otherwise). When completing the application:

- N/A (not applicable) is accepted as a response **only** if an N/A block is provided.
- If a number is requested, a number must be entered.
- If an item provides a choice of boxes to mark, mark only one box unless instructed otherwise.
- If an item provides a box to mark, written responses are not acceptable.
- The IRS may require additional information.
- The application has formatted fields that will limit the number of characters entered per field.
- All data input should be entered in Courier 10 point font.
- Alpha characters should be entered in capital letters.
- Enter spaces between any words. Spaces do count as characters.
- All date fields are entered as an eight-digit field (MMDDYYYY).
- Any attachment should refer to the form and the line item.

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## What To File

All applications (including applications for pre-approved plans, except as otherwise noted) must contain an

original signature and be accompanied by the following:

1. A completed Form 5300, which consists of pages 1–11.
2. A Form 8717, User Fee for Employee Plan Determination Letter Request, and, if applicable, a check for the appropriate user fee. Submit a separate check for each application. Make checks payable to the “United States Treasury.”

**Note.** Payments for sanction fees, compliance fees, etc. should be submitted on separate checks.

3. Form 8905, Certification of Intent to Adopt a Pre-Approved Plan, if applicable as determined under Part III of Rev. Proc. 2007-44.

4. A copy of the plan (all instruments that make up the plan in the case of initial qualification and a copy of the restated plan and trust, in the case of an amended plan where a DL is requested on the plan after initial qualification). A plan must be restated except for certain requests related to pre-approved plans. See lines 3a(2) and 3g later.

5. A copy of the latest DL if the plan has received one. If not available, explain why and include a copy of the prior plan or adoption agreement (including the opinion letter or advisory letter, if applicable).

6. Submit copies of all signed and dated interim and other plan amendments since the last restatement. If the plan did not receive a DL or is not otherwise entitled to reliance (in the case of a pre-approved plan making changes to the plan document) with respect to its prior remedial amendment cycle (RAC), all amendments for the CL applicable for the plan’s prior on-cycle submission period must also be submitted.

See Rev. Proc. 2007-44 for a description of the RAC.

**Note.** If the plan is a pre-approved (M&P or VS) plan, do not submit any interim or other amendments to the plan that were adopted by the M&P sponsor or VS practitioner on behalf of the employer and considered by the Service in issuing an opinion or advisory letter for the plan.

7. A copy of any compliance statement(s) or closing agreement(s) regarding this plan issued during the current RAC.

8. When requesting a DL on the entire plan as amended after initial qualification, attach a statement

explaining how any amendments made since the last DL affect this or any other plan of the employer.

9. In the case of a pre-approved plan not requesting a special ruling under *Lines 3a(2)* and *3g* later, attach an explanation why Form 5300 is being filed. In this case, the plan will be reviewed on the basis of the CL in effect when the application is filed (the “current list”). The application must include all interim amendments to the plan for qualification changes and guidance on the current list (as well as all discretionary amendments adopted by the date of the application) that were not considered in the current opinion or advisory letter for the plan, regardless of whether those amendments were adopted by the sponsor of the pre-approved plan document on the employer’s behalf.

10. If this is a special ruling request for a determination letter for an adopting employer of a pre-approved plan as described under *Lines 3a(2)* and *3g* later include a copy of the opinion or advisory letter and except in the case of a VS plan that does not authorize the practitioner to amend the plan on behalf of adopting employers do not include any interim amendments. The plan will be reviewed on the basis of the CL that was considered in issuing the opinion and advisory letter for the plan and the plan need not be restated.

For an employee stock ownership plan (ESOP), attach Form 5309, Application for Determination of Employee Stock Ownership Plan.

**Note.** Do not use staples (except to attach the check to the Form 8717), paper clips, binders, or sticky notes. Do not punch holes in the documents

See Rev. Proc. 2007-44 for a description of the RAC.

**Note.** (See the *Procedural Requirements Checklist* on page 11 of this form to ensure that the application package is complete before submitting it.)

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## Specific Instructions

**Line 1a through 1l.** Enter the name, address, and telephone number of the plan sponsor/employer.

A plan sponsor means:

1. In the case of a plan that covers the employees of one employer, the employer;

2. In the case of a plan sponsored by two or more entities required to be combined under sections 414(b), (c), or (m), one of the members participating in the plan; or

3. In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

**Note.**

- The name of the plan sponsor/ employer should be the same name that is used when the Form 5500 series annual return/report is filed for the plan. Line 1a is limited to 70 characters.

**Lines 1f, g, and h.** If applicable, complete these lines and follow the country's practice for entering the name of the province, county, or state and the postal code.

**Line 1i.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that is used when the Form 5500 series annual returns/report is filed for this plan. For a multiple employer plan, the EIN should be the same EIN that was or will be used by the participating employer when Form 5500 is filed by the employer.



*Do not use a social security number or the EIN of the trust.*

The plan sponsor/employer must have an EIN. A plan sponsor/employer without an EIN can apply for one.

- Online—Generally, a plan sponsor/ employer can receive an EIN by internet and use it immediately to file a return. Go to the IRS website at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small) and click on Employer ID Numbers (EINs).
- By telephone—Call 1-800-TAX-FORM (829-4933).
- By mail or fax—Send in a completed Form SS-4, Application for Employer Identification Number, to apply for an EIN.

**Note.** Form SS-4 can also be obtained at Social Security Administration (SSA) offices.

The plan of a group of entities required to be combined under section 414(b), (c), or (m), whose sponsor is more than one of the entities required to be combined, should only enter the EIN of one of the sponsoring members.

This EIN must be used in all subsequent filings of DL requests, and annual returns/reports unless there is a change of sponsor.

**Line 1l.** Enter the two digits representing the month the employer's tax year ends.

**Line 2.** The contact person will receive copies of all correspondence as authorized in a Form 2848 or Form 8821. Either complete the contact's information on this line, or mark the box and attach a completed Form 2848 or Form 8821.

**Line 3a.** Enter the number(s) that correspond to the request(s) being made. The first box under line 3a(1) must contain a 1, 2, or 3. Use the second box under line 3a(2) if a special ruling is requested under 4-7 below.

**Line 3a(1).**

- **Enter 1** if, for this purpose, a new individually designed plan is a new plan with an initial RAC within the meaning of Regulations section 1.401(b) -1(b)(1).
- **Enter 2** if the IRS has not issued a DL for the plan or the plan sponsor previously did not rely on an opinion/ advisory letter.
- **Enter 3** if the IRS has previously issued a DL for this plan or the plan sponsor previously relied on an opinion/ advisory letter.

**Line 3a(2).** Items 4-6 below apply to both individually designed and pre-approved plans asking for a special ruling. Item 7 only applies to individually designed plans, leave blank if not applicable. See special instructions for pre-approved plans under *What to File*, earlier.

- **Enter 4** if requesting a letter concerning the effect of section 414(m), attach the following information:

1. A description of the nature of the business of the employer. Specifically state whether it is a service organization or an organization whose principal business is the performance of management functions for another organization, including the reason for performing the management function or service.

2. The identification of other members (or possible members) of the affiliated service group (ASG).

3. A description of the nature of the business of each member (or possible member) of the ASG including the type of organization (corporation, partnership, etc.) and indicate whether such member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s).

4. The ownership interests between the employer and the members (or possible members) of the ASG (including ownership interests as described in section 414(m)(2)(B)(ii) or 414(m)(6)(B)).

5. A description of services performed for employers by the members (or possible members) of the ASG, or vice versa. Include the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether their services are a significant portion of the member's business and whether or not, as of December 13, 1980, it was unusual for the services to be performed by employees of organizations in that service field in the United States.

6. A description of how the employer and the members (or possible members) of the ASG associate in performing services for other parties.

7. A description of management functions, if any, performed by the employer for the members (or possible members) of the ASG, or received by the employer from any other members (or possible members) of the group (including data as to whether such management functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States.

8. If management functions are performed by the employer for the members (or possible members) of the ASG, describe what part of the employer's business constitutes the performance of management functions for the members (or possible members) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities).

9. A brief description of any other plan maintained by the members (or possible members) of the ASG, if such other plan is designated as a unit for qualification purposes with the plan for which a DL has been requested.

10. A copy of any ruling issued by the Washington, DC, office on whether the employer is an ASG; a copy of any prior DL that considered the effect of section 414(m) on the qualified status of the employer's plan; and, if known, a copy of any such ruling or DL issued to any other member (or possible member) of the same ASG, accompanied by a

statement as to whether the facts upon which the ruling or DL was based have changed.

• **Enter 5** if this is an application for a determination regarding the status of whether any employees are leased employees under the meaning of section 414(n), attach the following information:

1. A description of the nature of the business of the recipient organization;
2. A copy of the relevant leasing agreement(s);
3. A description of the function of all leased employees in the trade or business of the recipient organization (including data as to whether all leased employees are performing services on a substantially full-time basis);
4. A description of facts and circumstances relevant to a determination of whether such leased employees' services are performed under primary direction or control of the recipient organization (including whether the leased employees are required to comply with instructions of the recipient about when, where, and how to perform the services, whether the services must be performed by particular persons, whether the leased employees are subject to the supervision of the recipient, and whether the leased employees must perform services in the order or sequence set by the recipient); and
5. If the recipient organization is relying on any qualified plan(s) maintained by the employee leasing organization for purposes of qualification of the recipient organization's plan, a description of the plan(s) (including a description of the contributions or benefits provided for all leased employees that are for services performed for the recipient organization, plan eligibility, and vesting).

• **Enter 6** if this is a request for the effect a potential partial termination will have on the plan's qualification. The "effective date" means the date the partial termination occurred. Enter this date on line 3c.

**Partial termination. For a partial termination submit:**

1. A copy of the restated plan and trust plus all amendments made to the date the plan is adopted,
2. A copy of the latest DL, including caveats,
3. A statement explaining how any amendments made since the last DL

affect this or any other plan of the employer,

4. A statement indicating whether a partial termination may have occurred or may occur as a result of proposed actions and include a statement describing the applicable actions,

5. A schedule of information for the plan year in which the partial (or potential partial) termination began, using the format in the *Partial Termination Worksheet* at the end of these instructions. Also include on the schedule, data for the subsequent plan year, as well as for the two prior plan years,

6. If the plan has more than one benefit computation formula, complete a *Partial Termination Worksheet* for each benefit formula, and

7. Include an explanation of how the plan meets the requirements of section 411(d)(3).

• **Enter 7** if this is a termination of a multiemployer plan covered by PBGC insurance. Insert date of termination.

**Line 3b.** If the initial plan is a proposed plan document, enter "09/09/9999."

**Line 3e(2).** Provide the applicable RAC in which the plan is eligible for an on-cycle submission using the corresponding alpha character listed below:

1. A. Cycle A,
2. B. Cycle B,
3. C. Cycle C,
4. D. Cycle D,
5. E. Cycle E,
6. Pre-approved DC plan, or
7. Pre-approved DB plan.

**Line 3e(3).** Provide the corresponding number below indicating why the application should be considered on-cycle:

1. The last digit of the EIN,
2. A multiple employer plan,
3. A governmental plan including governmental multiple employer plan,
4. A multiemployer plan,
5. DC pre-approved plan, or an individually designed DC plan that is eligible for the six-year RAC, filing in the two-year window or
6. DB pre-approved plan, or an individually designed DB plan that is eligible for the six-year RAC, filing in the two-year window,
7. EIN of the parent company, jointly trustee single employer collectively

bargained plan, (if the plan sponsor is the Joint Board of Trustees include the EIN used on the Form 5500 filing) or centralized organization if that organization administers and operates the plan,

8. New plan exception,

9. Cycle changing event (include the date and explanation of the cycle changing event),

10. Cycle A controlled group election, ASG election or centralized group election. Attach a copy of the election. Also, attach a statement showing in detail:

- a. All members of the group,
- b. The type(s) of plan(s) each member has, and
- c. Plans common to all members.

11. Urgent business need, and

12. Other, attach an explanation.

**Note.** See Rev. Proc. 2007-44 for details, including sections 10, 11, and 16.

**Line 3g.** For a pre-approved plan or an individually designed plan. See special instructions under *What to File*, earlier for rules that apply to pre-approved plans asking for these rulings. In other circumstances where a pre-approved plan is asking for a determination under Form 5300, these special rules (reviewing on the basis of the underlying CL) do not apply. Attach an explanation explaining why the Form 5300 is being filed and see *What to File* earlier for instructions.

• **Enter 1** if multiple employer plan. For multiple employer plans that do not involve collective bargaining, submit either:

1. An application for the plan in the name of the controlling member, or
2. An application for the plan in the name of the controlling member and an application for each employer maintaining the plan who desires an individual DL. If an application is submitted for each member who desires an individual DL, the lead sponsor should complete the entire application and each adopting employer should complete only lines 1-X on each of the adopting employer applications. Each Form 5300 must be signed by the respective employers.

• **Enter 2** if this is a DL request required pursuant to published guidance by the Service, such as a minimum funding waiver. If this is a minimum funding waiver request, see section 15 of Rev. Proc. 2012-6.



• **Enter 3** if this is an M&P plan where the adopting employer has added language to satisfy the requirements of sections 415 and 416 because of the required aggregation of plans.

• **Enter 4** if the VS or M&P plan is a pension plan with a normal retirement age earlier than age 62. In this case the employer must submit a signed statement that this is a good faith determination of the typical retirement age for the industry in which the covered workforce is employed. See Regulations section 1.401(a)-1.

**Line 3h.** An individually designed plan is eligible for the six-year RAC if the employer that sponsors the plan and the sponsor of a pre-approved M&P or VS plan document jointly executed Form 8905 before the end of the plan's 5-year RAC which ends within the current 6-year RAC. An individually designed plan is also eligible for the 6-year cycle under certain other circumstances set forth in section 17 of Rev. Proc. 2007-44.

**Line 3i.** A VS plan may, but is not required to, contain a provision that authorizes the VS practitioner to amend the plan on behalf of employers who have previously adopted the plan. For purposes of reliance on the advisory letter, the practitioner will no longer have the authority to amend the plan on behalf of the employer as of the date of the adoption of an employer amendment to the plan to incorporate a type of plan not allowable in the VS program or as of the date the Service notifies the practitioner that the plan is an individually designed plan. See section 15.03 of Rev. Proc. 2011-49.

**Line 3j.** The plan sponsor/POA is an "identical adopter" of a pre-approved M&P or VS plan and has made no changes to the pre-approved plan document other than to select among options provided under the plan or certain changes described in section 19.03 of Rev. Proc. 2011-49.

**Line 3l.** Use the table to list all the amendments to the plan that have been adopted during the RAC of the plan in which the application is submitted (the "current cycle"), other than amendments described in the following paragraph.

**Do not list:**

1. any amendment that was adopted during the current cycle as a condition of a determination letter for the preceding cycle (but include a copy of the amendment with the application);

2. any amendment to a pre-approved plan that was adopted by

the sponsor on behalf of the employer and considered by the Service in issuing an opinion or advisory letter for the plan;

3. if 4-7 is entered in line 3a(2) or if 1-4 is entered in line 3g, any amendment to a pre-approved plan that is effective after the year of the CL that was considered by the Service in issuing an opinion or advisory letter for the plan, regardless of whether the amendment was adopted by the sponsor of the pre-approved document or the employer;

4. any interim amendment not included on the CL for which this determination is being requested.

**Note.** If the plan does not have a determination letter for the preceding RAC and you are not entitled to rely on an opinion or advisory letter for that cycle, you must include with the application copies of interim amendments adopted for the preceding cycle. See *What To File*, above. However, do not list these amendments in the table in line 3l.

**Column (i).** Note each amendment using an identifying number or name (such as Amendment 1, or PPA Amendment). An amendment may consist of modifications made to several plan provisions that are adopted on the same date. Two or more amendments with the same adoption date may be grouped and listed on a single line of the table. In this case, enter in column (ii) the effective date of the amendment with the earliest effective date of any of the grouped amendments.

**Column (ii).** Enter the date the amendment is actually effective under the plan. For example if an amendment is effective on the first day of the first plan year beginning on or after January 1, 2013, and the plan year of the plan ends on June 30, the date to be entered in column (ii) is 07012013.

**Column (iii).** If the amendment is in proposed form enter 09/09/9999.

**Column (iv) and (v).** Note with an "X" whether each amendment is an interim amendment only or a discretionary amendment only. If the amendment contains both discretionary and interim amendments, leave both boxes in column (iv) and (v) blank.

**Column (vi).** Note the due date of the employer's tax return, including extensions, if applicable, for the year in which the amendments were adopted. If

the relevant amendment is discretionary only, this field should be blank.

**Line 3m.** Enter number of amendments listed in the table in line 3l.

**Line 3n.** Designate the specific tax return that the employer uses to file its return. For example, Form 1120, 1040 or Form 990 series (in the case of a tax-exempt employer). For a tax-exempt employer, the section 990 series is a substitute for an income tax return. If no tax return is filed by the entity (such as a governmental employer) check N/A. See section 5.06(2) of Rev. Proc. 2007-44 for details.

**Line 4a.** This field is limited to 70 characters, including spaces. Fill in the plan name as it should appear on the DL. Keep in mind that "Employees" and "Trust" are not necessary in the plan name and will be left off if space does not permit.

**Line 4b.** Enter the three-digit plan number, beginning with "001" and continuing in numerical order for each plan you adopt (001-499). The numbering will differentiate your plans. The number assigned to a plan must not be changed or used for any other plan. This should be the same number that is used when the Form 5500 series annual returns/report is filed.

**Line 4c.** Plan month means the month in which the plan year ends. Enter the two-digit month (MM).

**Line 4e.** Enter the total number of participants. A participant is:

1. Any employee participating in the plan including employees under a section 401(k) qualified cash or deferred arrangement who are **eligible** but do not make elective deferrals,

2. Retirees and other former employees who have a nonforfeitable right to benefits under the plan, and

3. The beneficiaries of a deceased employee who is receiving or will in the future receive benefits under the plan. Include one beneficiary for each deceased employee regardless of the number of individuals receiving benefits.

**Example.** Payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

**Lines 4f and 4g.** Notice 2002-1, 2002-2 I.R.B. 283, provides guidance regarding the user fees for certain DL requests, within a plan's first 5 years. Under that notice certain DL requests made by an eligible employer are

exempt (generally an employer that has at least one employee who is not a highly compensated employee as defined in section 414(q) and is participating in the plan, and the employer had no more than 100 employees who received at least \$5,000 in compensation from the employer for the preceding year). Q&A-7 of Notice 2002-1 provides that employees take into account for purposes of determining the number of employees include all employees employed at any time during the preceding calendar year, including self-employed individuals under section 401(c)(1) who received earned income from the employer during the preceding year, regardless of whether they were eligible to participate in the plan. Thus, for example, employees who are excludable under section 410(b)(3) or who have not met the plan's minimum eligibility requirements must be taken into account. See Notice 2002-1 (as amplified by Notice 2003-49, 2003-32 I.R.B. 294, and Notice 2011-86, 2011-45 I.R.B. 698) for further details, including how to determine compensation.

**Line 5a.** A Pension Equity Plan (PEP) is a DB plan which, rather than or in addition to expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee as an amount equal to an accumulated percentage of final pay. Benefits are generally described as a percentage of final average pay, with the percentage determined as the accumulation of percentage points or lump sum credits received for each year of service. Generally, the accumulated percentage points or lump sum credits are multiplied by final average or career average compensation to determine the lump sum amount.

A "cash balance" plan is a DB plan which, rather than or in addition to expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a DC plan, that is, as a single sum amount equal to the employee's hypothetical account balance. Benefits consist of an accumulation of hypothetical allocation credits to an account plus hypothetical accumulated interest credits on that account.

**Line 5b(2).** If the plan's normal retirement age is below 62, the employer (or trustees in the case of multiemployer plan) must submit a signed statement that this is a good faith determination of the typical retirement

age for the industry in which the covered workforce is employed. See Regulations section 1.401(a)-(1). If this is a governmental plan leave blank.

**Lines 6a(1).** If the employer is a member a controlled group of corporations, trades or businesses under common control, or an ASG, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements. Attach a statement that provides the following in detail:

1. All members of the controlled group;
2. The relationship of each member to the plan sponsor;
3. The type(s) of plan(s) maintained by each employer;
4. Plans common to all members.

**Line 6a(2).** Mark "Yes" if the plan sponsor is a foreign entity; a nonresident alien individual; foreign corporations; foreign partnerships; foreign trusts; foreign estates; or any other person that is not a United States person. See sections 1473(5) and 7701(a)(30).

**Line 6b.** If "Yes," complete only applicable sections of this form. Governmental plans under section 414(d) are exempt from certain qualification requirements and are deemed to satisfy certain other qualification requirements under certain conditions. For example, the nondiscrimination, minimum participation rules, top heavy rules, and minimum funding standards do not apply to governmental plans. In addition, such plans meet the vesting rules if they meet the pre-ERISA vesting requirements.

**Line 6c.** If a church plan has not made such an election, complete only the portions of this form that apply. If a church plan has made an election, provide the date.

A church plan (for which no special election under section 410(d) has been made) is ordinarily not subject to various qualification requirements. Code provisions that do not apply to a nonelecting church plan include section 410 (relating to minimum participation standards), section 411 (relating to minimum vesting standards), section 412 (relating to minimum funding standards for pension plans), and section 4975 (relating to prohibited transactions). In addition, provisions relating to joint and survivor annuities, mergers and consolidations,

assignment or alienation of benefits, time of benefit commencement, certain social security increases, withdrawals of employee contributions, and distributions after plan termination, respectively also do not apply.

**Line 6g or 6h.** Complete if this is a request with respect to whether the requirements of section 401(h) are satisfied in a plan with retiree medical benefits features and/or on plan language that permits, pursuant to section 420, the transfer of assets in a DB plan to a health benefit account described in section 401(h). Also submit a cover letter specifically providing the location of plan provisions for 401(h), and section 420, if applicable. See the Appendix in Rev. Proc. 2012-8, 2012-1 I.R.B. 235 available at [www.irs.gov/irb/2012-01\\_IRB/ar13.html](http://www.irs.gov/irb/2012-01_IRB/ar13.html) for additional instructions.

**Line 7.** Section 3001 of the Employee Retirement Income Security Act of 1974 requires that applicants subject to section 410 provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If "Yes" is marked, it means that each employee has been notified as required by Regulations Section 1.7476-1. If this is a one-person plan or if this plan is not subject to section 410, a copy of the notice is not required to be attached to this application. If "No" is marked or this line is blank, the application will be returned. Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1.

**Line 12.** If "Yes," attach a separate statement providing the name, EIN and plan type of the other plan and a copy of pertinent plan provisions from the related plan regarding the offset.

**Line 13.** If this is a request for an individually designed plan that consists of a DB plan and a qualified cash or deferred arrangement, submit two Forms 5300 and two applicable user fees.

**Line 14.** Attach a statement that provides the following:

1. Name of plans involved,
2. Type of plan,
3. Date of merger, consolidation, spinoff, or a transfer of plan assets or liabilities, and
4. Verification that each plan involved was qualified at the time of the merger, consolidation, spinoff, or a transfer of plan assets or liabilities.

**Note.** Verification includes a copy of a prior DL, if any, the appropriate opinion or advisory letter and adoption agreement/plan document. Otherwise, provide a signed and dated copy of the most recent restatement and any subsequent amendments.

The plan and amendments submitted to verify the plan was qualified prior to the merger, consolidation, spinoff, or a transfer of plan assets or liabilities, are for information purposes only and will not be ruled on.

If applicable, file Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, 30 days prior to the merger, consolidation, or transfer of assets or liabilities.

**Line 15a.** If the plan has been restated to change the type of plan under Regulation section 1.401-1, answer this question "Yes" and attach a statement explaining the change.

**Line 16a.** Attach a statement for each plan, that includes the following information:

1. Name of plan,
2. Type of plan,
3. Form of plan (standardized, nonstandardized, VS, or individually designed),
4. Plan number,
5. Vesting schedule, and
6. Whether the plan has received a DL or an application for a letter is pending with IRS.

**Lines 16b and 16c.** See M-8, M-12, and M-14 of Regulations section 1.416-1.

**Line 17.** Section 411(d)(6) protected benefits include:

- The accrued benefit of a participant as of the later of the amendment's adoption date or effective date; and
- Any early retirement benefit, retirement-type subsidy, or optional form of benefit for benefits from service before such amendment.

If the answer is "Yes," explain on an attachment how the amendment satisfies one of the exceptions to the prohibition on reduction or elimination of section 411(d)(6) protected benefits.

	Partial Termination Worksheet	Year	Year	Year of partial termination	Year
1	Participants employed:				
a	Number at beginning of plan year				
b	Number added during the plan year				
c	Total, add lines <b>a</b> and <b>b</b>				
d	Number dropped during the plan year				
e	Number at end of plan year, subtract <b>d</b> from <b>c</b>				
f	Total number of participants in this plan separated from service without full vesting				
2	Present value (as of month ___ / ___ / ___ day during the year of)				
a	Plan assets				
b	Accrued benefits				
c	Vested benefits				
3	Submit a description of the actions that may have resulted (or might result) in a partial termination. Include an explanation of how the plan meets the requirements of section 411(d)(3).				

## How To Get Forms, Publications, and Assistance

**Internet.** You can access the IRS website 24 hours a day, 7 days a week at IRS.gov to:

- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products.
- Research your tax questions.
- Search publications by topic or keyword.
- Sign up to receive local and national tax news by email.

**DVD for Tax Products.** You can order Pub. 1796, IRS Tax Products DVD, and obtain:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Tax Map: An electronic research tool and finding aid.
- Tax Law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.

The DVD is released twice during the year. The first release will be shipped at the beginning of January 2013 and the final release will be shipped at the beginning of March 2013.

Purchase the DVD from the National Technical Information Service (NTIS) at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$30 (no handling fee), or call 1-877-CDFORMS

(1-877-233-6767) toll-free to buy the DVD for \$30 (plus a \$6 handling fee).

**By phone and in person.** Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions and publications, and prior-year forms and instructions (limited to 5 years). You should receive your order within 10 days. You can also get most forms and publications at your local IRS office.

For questions regarding this form, call the Employee Plans Customer Service, toll-free, at 1-877-829-5500.



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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want to have your plan approved by the IRS, you are required to give us the information on this form. We need it to determine whether you meet the legal requirements for plan approval.

We may disclose this information to other countries under a tax treaty, or to a federal, state, or local agency to enforce federal nontax criminal laws and to combat terrorism. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form
Form 5300	33 hr., 57 min.	10 hr., 7 min.	17 hr., 38 min.	1 hr., 52 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, SE:W:CAR:MP:T:B:T, 1111 Constitution Ave., NW, IR-6526, Washington, DC 20224.

**Do not** send any of these forms or schedules to this address. Instead, see *Where To File* earlier.

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